

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MOTION FOR LEAVE TO FILE OUT OF TIME

COMES NOW, Relator Ed West, by his counsel of record, and for his Motion for Leave to File Out of Time, states as follows:

1. On April 2, 2008, Defendant Ortho-McNeil Pharmaceutical, Inc. filed a Motion to Dismiss West's Claim for "Marketing the Spread to Hospitals" and a Memorandum in Support [documents 5189 and 5190 respectively] ("Motion to Dismiss").
2. Pursuant to Local Rule 7.1(b)(2), Relator's Response in Opposition to the Motion to Dismiss ("Opposition") was due on April 16, 2008.
3. On Relator's Unopposed Motion for Extension of Time [document 5215], this Court granted Relator until April 30, 2008 to file his Opposition.
4. Pursuant to Local Rule 5.4(D), Relator's Opposition should have been filed by 6:00pm EDT on April 30, 2008.
5. Relator seeks leave from this Court to file his Opposition out of time. Relator's counsel unintentionally failed to file the Opposition by the required time and meant no offense to the

Court thereby. Relator's counsel will file this Motion and the Opposition by midnight central time.

6. Defendant will not be prejudiced in any manner by the untimely filing of the Opposition.

Relator will be severely prejudiced if the Opposition is not filed.

7. Due to the time constraints and the late hour of filing, Relator has not been able to confer with Defendant's counsel regarding their position on this Motion.

8. The Opposition is attached hereto. Relator respectfully requests that the Court allow the Opposition to be filed and instruct the Court Clerk to file the Opposition.

WHEREFORE, Relator respectfully prays this Court enter its Order granting Relator's Motion for Leave to File Out of Time, ordering that Relator's Opposition shall be filed, instructing the Court Clerk to file Relator's Opposition, and for such further orders and relief as this Court deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

John A. Bruegger, an attorney, hereby certifies that on May 1, 2008, he electronically filed the foregoing documents with the Clerk of the Court for the District of Massachusetts using the court's CM/ECF system.

A copy of the foregoing also has been served on May 1, 2008 on the following individuals by depositing a copy in the U.S. mail, first-class postage pre-paid:

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